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SUPREME COURT OF THE UNITED STATES.

No. ~~220~~ 152.

THE UNITED STATES, APP'TS,

vs.

L. V. PRUDHOMME, ADMINISTRATOR OF TIBURCIO TAPIA, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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"Cucamonga."

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1 *Transcript of the proceedings in case No.* 370.

LEON VICTOR PRUDHOMME, ad., &c., claimant, *vs.* THE UNITED STATES, defendant. } For the place named "Cucamonga."

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this second day of October, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Leon Victor Prudhomme, administrator, &c., for the place named "Cucamonga," was presented, and ordered to be filed and docketed with No. 370, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *November* 1*st*, 1852.

In case No. 370, Leon Victor Prudhomme, administrator, &c., for the place named "Cucamonga," the deposition of Abel Stearns, a witness in behalf the claimant, taken before Commissioner Hiland Hall, with document marked H. H. No. 1, and translation ther of marked No. 2 and 3, annexed thereto, was filed.

(*Vide* page 4 of this transcript.)

SAN FRANCISCO, *October* 14*th*, 1853.

Case No. 370, on motion of the counsel for the claimant, was ordered to the foot of the docket.

4 SAN FRANCISCO, *October* 10*th*, 1854.

Case No. 370 was submitted without argument, and taken under advisement by the board.

SAN FRANCISCO, *October* 17, 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the board rejecting the claim.

(*Vide* page 27 of this transcript.)

And the following order was made, to wit:

(*Vide* page 32 of this transcript.)

5 *Petition.*

To the honorable the United States commissioners for the settlement of California land claims:

Your petitioner, Leon Victor Prudhomme, resident of the county of Los Angeles, State of California, and administrator of the estate of Tiburcio Tapia, late of said county and State, deceased, respectfully represents that the said Tiburcio Tapia died about the year A. D. 1849, seized of the lands of the rancho of Cucamonga, which was granted originally to him by Juan B. Alvarado as governor ad interim of the department of the Californias, and as such having ample powers in the premises, by deed of concession bearing date May 3rd, A. D. 1839, being a grant in fee simple of said lands, bounded as follows, to wit: Beginning at a point where the creek of Cucamonga crosses the main road leading from San Gabriel to San Bernardino, running east 6,300 varas to a hillock, where is an alder tree serving as a landmark; thence north 12,7 9 varas to the foot of the mountain, where two live-oak trees were marked, standing at the edge of a dry creek; return to the place of beginning, thence westerly 12,000 varas along said road to the creek of San Antonio; thence northerly 5,000 varas to the foot of said mountain; and then east along said mountain 18,300 varas to the said two live-oaks, containing three leagues of grazing land, more or less, and situate in the county and State aforesaid. Judicial possession thereof was given by the proper municipal authority to the original grantee on the 29th of February, A. D. 1840.

That from the date of said grant the said original grantee held peaceable and uninterrupted possession of said rancho to the
6 day of his death, building a house and fulfilling all the conditions of said grant, since which time his legal representatives have held the same possession.

There are no interfering claims. It has not been surveyed by the United States surveyor general for California.

Your petitioner would further state that said original grantee left at his death two legitimate children, named Maria Merced, who is the wife of your petitioner, and Juan de la Cruz, who are yet minor heirs, and for whose benefit and in whose name this petition is made.

Your petitioner would rely, in support of said claim, upon the following documentary evidence:

1st. A fac simile copy of the expediente in the case, marked "A;"

2nd. Copy of the original grant, marked "B;"

3d. Copy of the act of judicial possession, marked "C;"

All of which are accompanied with true translations, marked 1, 2, 3.

The above papers are filed with the secretary of your honorable board. He will rely further upon such other documentary and parol

evidence as may be deemed necessary to support said claim; and he prays that you will confirm said heirs in the property and possession of said rancho. And, as in duty, &c.

Oct. 2nd, 1852.

LEON V. PRUDHOMME,
Administrator,
By SCOTT & GRANGER,
Attorneys.

Filed in office October 2nd, 1852.

GEO. FISHER, *Secretary.*

Recorded in record of petitions, volume 1, pages 290 and 291.

GEO. FISHER, *Secretary.*

7 *Deposition of Abel Stearns.*

LOS ANGELES, *November 1st*, 1852.

On this day, before Commissioner Hiland Hall, came Abel Stearns, a witness on behalf of the claimant, Leon Victor Prudhomme, administrator, petition No. 370, and was duly sworn. The U. S. associate law agent was present.

In answer to questions by counsel for the claimant, the witness testified as follows :

My name is Abel Stearns ; my age fifty-four years ; and reside in the city of Los Angeles. I have resided in California over twenty-three years.

I am acquainted with the handwriting and signatures of Tiburcio Tapia, Juan B. Alvarado, Manual Jimeno Cosme D. Peña, Juan B. Leandry, Narciso Botello, and Julian Chavis.

A paper is now shown me, purporting to be original title-papers of Tiburcio Tapia to a tract of land called Cucamonga, the grant dated 3rd March, 1839, to which is attached a testimonial of juridical possession in February and March, 1840.

The names of the said several persons appearing on said paper I believe to be genuine.

Said Leandry was, at the time of said juridical possession, acting alcalde, and a proper officer to give it. Said paper is hereto attached, and numbered H. H. No. 1.

I am acquainted with the rancho described in said papers. I was present at the giving of juridical possession, and directed the measurements of the land. There was a house on the land which Tapia had built, and in which his overseer and servants then lived.

8 He had on it quite a stock of cattle—I think some fifteen hundred head—and also horses and sheep. He set out a vineyard there, and also cultivated considerable ground.

His occupancy continued during his lifetime, and his family have occupied since to the present time. I think he died in 1845. His wife had died previously.

He left two children, a son and a daughter. The name of the son,

who is still a minor, is Juan or José de la Cruz, and the daughter is now the wife of Leon Victor Prudhomme, who is now administrator of the estate.

I think the daughter's name is Maria Merced.

ABEL STEARNS.

Sworn and subscribed before me.

HILAND HALL, *Commissioner.*

Filed in office November 1st, 1852.

GEO. FISHER, *Secretary.*

Recorded in Evidence B, volume 2, page 193.

GEO. FISHER, *Secretary.*

9 *Esp'd'te.*

Sta. Barba. 24 de Eno. de 1832. Buelon esta instancia en V. para que acompañando el deseño correspondte. doriginal ayuntamto. de la ciudad de Los Ang's quien informara se el terreno mencionado pertenece ò no á la propiedad particular de alga. individuo ò pueblo ò corporacion evacuado este a requisito buelon este esped'te al gob'no para su resolucion.

ALVARADO.

Ang's, Feb'o 4 de 1839. Dado cuenta al Y ayuntam'to de esta ciudad en cession de hoy coneste esped'te acorde pasara á una comision especial compunesto de los Sres. reg'a D. Fran'co Ma. Alvarado y D. Josè Sepulveda pa. ql. informe previa
10 citacion de colindantes.

TIBURCIO TAPIA, Pte.
NAREISO BOTELLO, Srio.

Exmo. Sor. Gobr. del departm'te. El ciuadadano Tiburcio Tapia vecino de la ciudad de Los Angeles ante V. E. en toda forma de derecho espongo ql. siendo poseedor de algunos bienes de campo los cuales sufrar notable perjuicios en razon de estar en un terreno pr. crencia y al ql. tienen lugar varios hermanos necesitando aseguran el patrimonio asi como el dejar en mis hijos asegurados su bien estar futuro evitandoles las continuas contiendas ql. presentarán los distintos erederos. He de merecen de V. E. tenga á bien consederme el parage llamado Cucamonga cituado al este Sn. Gab'l, como dose leguas y cuya estencion comprende des de los linderos de Sn. José pa. Sn. Bernardino tres situos de ganado mayor con cuya porcion podré conseguir el mantenimiento y fomento de mis intereses.

A. V. E. rendidam'te suplico sevasir aseder á mi solitud si lo considera de justicia, protestando lo necessario y esperando, tenga V. E. a bien admiter el presente en papel comum pr. no haber el del sello ql. se requiro.

Sta. Barbara y Enero 23 de 1839.

TIBURCIO TAPIA.

Y. A. La comision especial nombrado pr. V. S. pr. informar á serca del presente esped'te prebido por el Sr. Tiburcio Tapia dice: ql. habiendo prosedido á haser la correspond'te redusion del parage que solicito conocido pr. el nombre Cucamonga con citacion de colindantes y adm'or de la mision de San Gabriel, encuentra que se le puede conseder pr. hayarse enteram'te valdio pues no existen en el ningunos bienes de menos otra clase de finca, aunque se ha reconocido pr. de la espresada mision de Sn. Gabriel lo que hace mucho tiempo lo tiene

abandonado; como tambien en consideracion á ql. el solicitante el C. Mejicano pr. nacimiento y tiene suficientes bienes de campo pa. cubrir lo al que se refiere á qualesquiera atra q. fuere necesario.

Ang's, Feb'ro 25 de 1837.

FRANCO. MA. ALVARADO.
JOSÉ SEPULVEDA.

ANGELES, *Febro., de* 1839.

Dado cuenta al Yulstre ayuntam'to de esta cuidad en secion de hoy con el informe ql. antecede, fue aprovado pr. pluralidad de votos pr. dha Ylus'tre corporacion; acordanto se devuelva esta esped'te al Ex'mo Sor. Gobor'r del departmento pa. su conocim'to.

TIBURCIO TAPIA.
NARCISO BOTELLO, Srio.

MONTEREY, 16 *de Abril de* 1839.

Virta la peticion con que de principio este esped'te y el informe del Y ayuntamiento de la cuidad de Los Angeles con tódo lo
11 demas que se tubo presente y ver conbino de conformidad con lo dispuesto por las leyes y reglamentos de la materia se declarar al ciudadano Tiburcio Tapia dueño en propiedad del terreno conocido con el nombre de Cucamonga, colindante con S. José en la jurisdiccion de San Gabriel con estencion de tres sitios de ganado mayor poco mas ó menos, sujetandose á la aprobacion de la E. Junta Departamental y las condiciones que se espliquar en el titulo.

El S. D. Juan B. Alvarado gob'or interimo del departamento, asi lo mandé, decreté y firmé de que doy fee.

(Here follows map, marked original, page 13.)

14 OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my charge a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the five preceeding and hereunto annexed pages of tracing paper, numbered from one to five, inclusive, and each of which is verified by my initials, (J. D. K.,) exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal'a, the 22nd day of September, 1852.

[SEAL.]

SAM'L D. KING, *Surv. Gen'l, Cal'a.*

Filed in office Oct. 2nd, 1852.

GEO. FISHER, *Sec'y.*

Translation of espediente.

16 *Most Excellent Senior, Governor of the Department of* ——

The citizen Tiburcio Tapia, resident of the city of Los Angeles, before your honor, with every form of law, declares that being possessor of some grazing stock, which suffers noted prejudice by reason of being kept on lands of inheritance, to which various brothers have place to secure the patrimony of each. Likewise, my sons have to be left there to secure my interest and to avoid the continual contentions which the different heirs will present. I have to merit of you the goodness to grant me the place called Cucamonga, situated to the east of San Gabriel about 12 leagues, and in its extent comprises from the boundaries of San José to San Bernardino, three leagues of grazing land, with which portion I can secure the maintainance and encouragement of greater interests, in which account I humbly beseech of your excellency to grant my petition. If you deem it just, swearing it necessary, and hoping you will have the goodness to admit the present on common paper for want of the sealed, which is required.

Santa Barbara, January 23, 1839.

TIBURCIO TAPIA.

Endorsed on the same :

SANTA BARBARA, 24*th of January*, 1839.

Return this petition to the party interested, accompanied with the corresponding diagram, that he will direct to the city council of the city of Los Angeles, who shall report whether or not the land referred to appertains to the particular property of any individual, pueblo, or corporation.

This requisite having been discharged, return this espediente to the government for its decision.

ALVARADO.

17 Endorsed also :

ANGELES, *February* 4*th*, 1839.

Account of this espediente having been given to the illustrious city council, in session of to-day, they agreed to commit it to a committee comprised of the Señores Registradores D. Francisco Maria Alvarado y Don José Sepulveda, that after the citation of the neighboring landowners they may report thereon.

TIBURCIO TAPIA, *President.*

NARCISO BOTELLO, *Secretary.*

Illustrious City Council:

The special committee appointed by you to report upon the present espediente occasioned by the S^{r} Tiburcio Tapia, report that having proceeded to make the corresponding examination of the place which he solicits, known by the name of Cucamonga, upon citation of adjoining land claimants and administrator of the mission of San Gabriel, found that it can be considered wholly unoccupied ; that no grazing stock, much less any other class of property, exists thereon,

although it has been recognized of the mission, aforesaid, of San Gabriel.

It has been abandoned for some time ; likewise, considering that the petitioner is a Mexican citizen by birth and has sufficient grazing stock to cover that which is referred to, and has whatever other property would be necessary.

Angeles, February 29th, 1839.

FRAN'CO MA. ALVARADO.
JOSE SEPULVEDA.

ANGELES, *February 29th*, 1839.

18 The illustrious city council having taken notice of the foregoing report in their session of to-day, it was approved by an absolute majority of votes by said corporation, resolving that this espediente be returned to the most excellent governor of the department for his convenience.

TIBURCIO TAPIA.

NARCISO BOTELLO, *Secretary.*

MONTEREY, *April 16th*, 1839.

Having seen the petition with which this espediente commences, and the report of the illustrious city council of the city of Los Angeles, with every further step which the present has taken, and that all agrees in conformity with the direction of the laws and regulations on the subject, the citizen T. Tapia is declared owner in property of the land known by the name of Cucamonga, joining with San José, in the jurisdiction of San Gabriel, embracing in its extent three leagues of grazing land, a little more or less, subject to the approval of the E. Dep't Assembly, and the conditions which are explained in the title. The S^{r} D'n Juan B. Alvarado, gov. ad int. of the dep't, thus order, decree, and sign it, which I attest.

Filed in office Oct. 2nd, 1852.

GEO. FISHER, *Secretary.*

H. H. No. 1.

20 *Testimonio del espediente de posecion del Rancho á parage llamado "Cucamonga," dada la favor del Sor. Dn. Tiburcio Tapia. Año de* 1840.

21 STA. BARBARA,
En'o 25 de 1839.

Puede el interesado en esta representac'n ocupado provicional el terreno que pretende sujetandose al resultado de la instancia que indica tener pendiente.

ALVARADO.

EXMO. SOR. GOB'R DEL DEPARTAM'TO:

El Ciudo. Tiburcio Tapia vecino de la ciudad de Los Angeles, ante, V. E. contodo respecto presenta esta y dice ql. teniento presentada á V. E. una insta. pa. la ad quecision del paraje llamado Cucamonga y sicudo el tiempo preciso pa. preparar en el las labrauras y demas trabajos del campo; se sirva V. E. consederle ha ocupacion del mencionado parage con el fin de no perder la opor-

tuna ocasion del tiempo ql. se presenta; y sigetandose al resultado de mi dha instancia, qn. lo que à V. E. nugo me conseda esta peticion y suplico me admite V. E. la haga en papel comun por no haver sellado en el lugar.

Sta. Barbara y Enero 24 de 1839.

TIBURCIO TAPIA.

JUAN B. ALVARADO,
Gobernador Interino del Departmento de las Californias.

[SEAL.] Por cuanto Dn. Tiburcio Tapia Mejicana por nacimiento ha pretendido para su benificio personal y el de su familia el terreno conocido con el nombre de Cucamonga situado al Este de Sn. Gabriel, distante dace leguas, y con estencion de tres sitios de ganado mayor poco mas ò meno practicada previamente las diligencias y Averizuaciones concermentes segun lo dispuesto por las leyes y reglamentos asando de las facultades que me son conferidas à
22 nombre de la nacion Mejicano hevenido en concederle el mencionado terreno declarandole la propiedad de el por las presentes letras segetandose à las condiciones seguientes, y à la aprobacion ò disaprobacion de la Exma. Junta departamental.

1o. Rodra Cucarlo sin prejudicar las travesias cammas y servidumbres, lo disfrataran libre y esclusivamente, destiuandolo al uso ò cultivo que mas le acomode; pero dentes de un año à lo mas fabricarà casa y estara habitada.

2o. Solicitarà del juez respectivo que le de posecion juridica en virtud de este despacho, por el cual se demarcaran los linderos, en cayos limites pondrà à mas de las majoneras algunos arboles frutales ò silvertres de alguna utilidad.

3o. El terreno de que se hace mencion es de tres citios de ganado mayor poco mas ò menos segun esplica el diceño que corre al espediente. El juez que diere la posecion lo hara medir conforme à ordenanza; quedando el sobrante que resulte à la nacion para los usos conveniente.

4a. Si contraviniere à estas condiciones perdera su derecho al terreno y serà denunciable por otro.

En consecuencia mando que temendorse por firme y valedero este titulo se tome razon de el en el libro à que corresponde y se entregue al internado para su resguardo y demas fines. Dado en Monterey à tres de Marzo de mil ochocientos treinta y nueve.

Estendiendose este titulo en papel comun por no haber del sellado.

JUAN B. ALVARADO.

23 MAN'L JIMENO,
Scriv. del Despacho.

Queda tomada razon de este despacho en el libro correspondiente à fojas 6.

MAN'L JIMENO.

El E. P. Gobernador ha dispuesto se tome razon de este despacho en la prefectura del segunda distrito.

JIMENO.

Queda tomada razon a Fos. 1a. del libro respectivo ql. para en la Scrin. de esta prefectura.

COSMO D. RENO.

Sello tercero dos reales. Habilitado provisionalmente por la aduana maritima Monterey para los años de 1839 y 1840.

ALVARADO.
ANTONIO MA. OSIO.

[SELLO.] En la ciudad de los Angeles del departament de los Californias a los veinte y sute dias del mer de Febrero de mil ochocientos cuarenta annente à la solicitud del Sor. Dn. Tiburcio Tapia à fin dè que selede la posecion correspondte ; del sitio y rancho llamado Cucamonga consededo por el gobierno de este departamento y convenido con el agrimensor Dn. Abel Stearns para que reunida el enunciado terreno con total arreglo à las premeras mididas que se han practicada parese por ni y los testigos de mi asistencia al es presado sitio y procedase à das posecion indicada arreglandose al titulo ô despacho que se le ha confesido por al gobierno conf'ha tres de Marzo de mil ochocientos treinta y nuebe.

JUAN BTA. LEANDRY.

Assist.:
NARCISO BOTELLO.
JULIAN CHAVES.

En el mismo dia mes y año estando en el rancho San José
24 el juez que subscribe pase oficio al Sor. admor. de la mision de Sn. Gabriel Dn. Juan Bandini, como Colindante por Sta. Ana del Chino y à Dn. Ygnacio Palomores por el mismo Sn. José manifestandoles el objecto à que me dirija al punto de Cucamonga pues iba à remidirlo y poner en posecion de el al Sor. Dn. Tiburcio Tapia y no habiendo manifestado escepciones algunas que suspendieran las medidas, les dije que prosedia à ellas.

[SEAL.] Sello bucero dos reales. Habilitado provicionalmente por la aduana maritima de Monterey para los años de 1839 y 1840.

ALVARADO.
ANTONIO MA. OSIO.

Correjido.

Lo que pongo por diligencia que autorizò y firmó con los testigos de mi asistencia segun dro., doy feé.

JUAN BTA. LEANDRY.

Asisstencia : NARCISO BOTELLO.
JULIAN CHAVES.

En el rancho de Cucamonga à los veinte y ocho dias del mes de Febrero, de mil ochocientos curaenta y c. el propio juez para la practica de estas diligencias, nombré dos oficiales Cordeleros, que por no saber firmar se ometen sus nombres à quienes les hize saber su nom-

bramento el que aceptaron bajo del peramente que otorgaron afreciendo desempeñar fielmte. su encargo lo que autorisò y firmó con los testigos de mi asistencia segun dro.

JUAN BTA. LEANDRY.

Assist. : NARCISO BOTELLE.
JULIAN CHAVIS.

En el mismo dea mes y año estando en el parage del camuro que va à Sn. Bernardino, y en el puerto donde atrabesa el arroyo del mismo Cucamoriga freuta à la lomita en que esta cituada la casa à efeeto
25 de verificar las remidddidas y posecion que corresponde al Sor. Dn. Tiburcio Tapia del repitido sitio Cucamonga previos todos los requisitos de ley y estando ante mi los testigos de asistencia, los oficiales Cordeleros y el agrimensor Dn. Abel Stearns, hue medio un cordel que contenea dos cientas nuebe varas el cual fuè examinado y reconocido por el enunciado agrimensor y asido à sus estremos unos sancos de madera previa observacion y calculo.

Sello tercero, dos reales. Habilitado provicionalmente por la aduana maritima de Monterey, para los años de 1839 y 1840.

ALVARADO.
ANTONIO MA. OSIO.

Correjido.

[SEAL.] Del repetido agrimensor por su disposicion se tero el cordel à la orilla ò paredon del surodicho arroyo, rumbo este por sobre el camino mencionado que va à Sn. Bernardino se midiena y contaron seis mil tres cientos varas hasta un altito que queda en la misma camino en el en al sehalla un sance que se señala por mohonera à cuyo fin se le contaron algueros brasos. De este punto habiendo comparecido ayi los S'res Dn. Juan Bandini y Dn. Ygnacio Palomares, tirando la cuerda rumbo norte se midieron y contaron doce mil setecientos cuarente y nueve varas los que remataron alpie de la sierra à la Orilla de un arroyo seco donde si marco por mohonera dos encinos que hoy puertos. En estado habiendo comensado à lloner se suspendieron estas diligencias para continuar los dispues que anoto y firmo para constancia con el agrimensor y los testigos de mi asistencia doy feé.

JUAN BTA. LEANDRY.

Asistencia : NARCISO BOTELLO.
JULIAN CHAVIS.

26 En viente y nuebe de dicho mes y año babiendo vuelta al mismo puerto donde el dia antereor se comenzaron las medidas y del arroyo referido de Cucamonga tomando el rumbo este y oerte por el camino se midieron y contaron doce mel vavas que remataron en el arroyo de Sn. Antonio que es el lindero del rancho de Sn. José, y divider à este y Cucamonga. En seguida tirando el cordel.

Sello tercero dos reales. Habilitando provicionalmente por la aduana maritima de Monterey, para los años de 1839 y 1840.

ALVARADO.
ANTONIO MA. OSIO.

[SEAL.] Rumbo sur à norte se midieron y contaron cinco mil varas que remataron alpie de la misma sierra que es lindero rumbo norte. De aqui tirando la cuerda ponel pie de dicha sierra hasta el puerto de los dos encinos la que el dia anterior rencataron las medidas y hace esquma rumbo norte à este se contaron las mismas varas de diezy ocho mil trecientos que por el camino mencionado que es el otro lindero rumbo sur con lo que se concluyeron las medidas de este sitio à satisfacion del interesado à quien le ordenè pusiere las respectivas mohoneras en las puertos donde corresponde y quedi entendido habiendo sido marcadas aquellos en señal de porecion lo que pongo, por deligencia advertiendo que el terreno util de este sitio nollega à cuatro leguas cuadrados por que la mayor parte del que consta al pre de la sierra es esterel y lo firmó para constancia con el agrimensor y testigos de assistencia doy feé.

JUAN BTA. LEANDRY.
ABEL STEARNS.

Assista.: NARCISSO BOTELLO,
JULIAN CHAVIS.

27 Angeles, Mar zo dos de mil ochocientos cuarenta. Derele testimonio à la parte de las presentes diligencias que le servirà de titulo de posecion para su resguardo y seguridad Juan Bta. Leandry. Juez segundo de paz de esta cuidad y su comprencion asi lo mandò decreto y firmò por ante los testigos de assist'a segun Dn., doy feé.

JUAN BTA. LEANDRY.

Assista.: NARCISSO BOTELLO.
JULIAN CHAVIS.

Con cuerda con las diligencias originales. Sello tercero dos reales. Habiliado provincialmente por la aduana maritima de Monterey, para los años de 1839 y 1840.

ALVARADO.
ANTONIO BTA. OSIO.

[SEAL.] Que se refriren y existen en el libro de instrumentos publicos en el que quedan protocoladas y constantes desde foxas hasta vta. esta fielmente sacada y corregida escrita en suico foxas que autorizò y firmò con los testigos de mi assista. cu la ciudad de Angeles à los dos dias del mes de Mayo de mil ochocientos cuarenta.
En testimonio de verdad.

JUAN B. LEANDRY.

Assa.: NARCISSO BOTELLE.
JULIAN CHAVIS.

Filed in office Nov'r 1st, 1852.

GEO. FISHER, *Sec'y.*

28 *Translation of grant.*

Juan B. Alvarado governor ad interim of the department of the Californias.

Whereas Don Tiburcio Tapia, a Mexican by birth, has claimed for his benefit, and that of his family, the land know by the name of Cucamonga, situated to the east of the "San Gabriel," distant twelve leagues, and of an extent of three leagues, for horned cattle, little more or less, having exercised previously the investigations and examinations according to the disposition made by the laws and regulation, using the powers which are conferred upon, in the name of the Mexican nation, I have resolved to grant him the above-mentioned land, declaring it to be his property by the present letters, being subject to the following conditions, and to the approbation of the most excellent departmental assembly:

1st. He may enclose without prejudice to the traversing roads and servitudes; he may farm it freely and exclusively, destining it to that use or cultivation that may most suit him; but within one year he shall build a house, and it shall be inhabited.

2nd. He shall solicit of the proper judge that he will give him judicial possession by virtue of this dispatch, by which the boundaries shall be designated, in the limits of which he shall place, in addition to the landmarks, some fruit or forest trees of some utility.

3rd. The land of which mention is made is of three leagues of horned cattle, (tres sitios de ganado mayor,) a little more or less, according as the diagram, which occurs in the espediente, explains. The judge who may give the possession shall cause to measure it in conformity with the ordinance, reserving the surplus to the
29 nation for necessary uses.

4th. If he shall contravene these conditions he shall lose his right to the land, and it shall be liable to denunciation by another.

Wherefore, I order that this title be held firm and valid; that account of it be taken in the proper book, and be delivered to the party interested for his protection and further ends.

Given at Monterey the third of March, one thousand eight hundred and thirty-nine. Committed to writing on this common paper, for the want of the sealed.

JUAN B. ALVARADO.
MANUELJI MENO, *Secretary of Dispatch.*

Account of this dispatch remains taken in the proper book on the 6th leaf.

MANUEL JIMENO.

His excellency the governor has ordered that account of this dispatch be taken in the prefecturate of the district.

JIMENO.

Account remains to be taken on leaf 1st of the proper book for the service of this prefecturate

COSME D. RENO.

MOST EXCELLENT SEÑOR, GOVERNOR OF THE DEPARTMENT: The citizen Tiburcio Tapia, resident of the city of Los Angeles, before your excellency, with every respect, presents this and says:

That having presented to your excellency a petition for the acquisition of the place called Cucamonga, and it being the season necessary to commence a tillage and other business of the plain, may it
30 please your excellency to grant the occupation of the place referred to, to the end that I may not lose the opportune occupation of the season which presents itself; and subjecting me to the result of my said petition as to what may be just, I request that your excellency will grant me this petition, and I supplicate that he will admit this upon common paper, there being no sealed paper.

Santa Barbara, January 24th, 1839.

TIBURCIO TAPIA.

SANTA BARBARA, *January 25th*, 1839.

The party interested in this representation can occupy, provisionally, the land which he solicits, being subject to the result of the petition which he indicates is pending.

ALVARADO.

Annexed to the deposition of Abel Stearns of November 1st, 1852.

GEO. FISHER, *Sect'y.*

Filed in office October 2nd, 1852.

GEO. FISHER, *Secretary.*

Translation of act of judicial possession.

Seal of the third class, 25 cts.

Qualified provisionally for the maritime custom house at Monterey for the years 1839 and 1840.

ALVARADO.
ANTO. MARIA OSIO.

In the city of Los Angeles, of the department of the Californias, at the twenty-seventh day of the month of February, one thousand eight hundred and forty, corresponding to the petition of Tiburcio Tapia, to the end that the corresponding possession of the tract and ranche called Cucamonga may be given him, which was
31 granted by the government of this department, and having agreed with Don Abel Stearns, the surveyor, that he would remeasure the same land with total conformity to the first measurements that have been made, let it be passed by me and the witnesses of my assistance to the said tract, and let it be proceeded to give the possession indicated, in conformity with the title or dispatch which has been conferred upon him by the government, at the date of the third of March, one thousand eight hundred and thirty-nine.

JUAN B'TA LEANDRY,
2nd Justice of the Peace of the said city.

Thus I decreed it, ordered it, and signed it, with the witnesses of my assistance, according to law, which I attest.

Assist.:

NARCISSO BOTELLO.
JULIAN CHAVIS.

On the same day, month, and year, being in the rancho of San José, the justice who subscribes, I gave official notice to the administrators of the mission of San Gabriel, Don Juan Bandini, as adjoining neighbor for Santa Ana del Chino, and to Ygnacio Palomares for the same San José, explaining to them the object for which I had directed myself to the point of Cucamonga, to wit, that I went to remeasure it, and to put into its possession S^{a} Don Tiburcio Tapia, and they not having manifested any objection which should suspend the measurement, I told them that I should proceed to the measurements which I set down for inspection, authorize and sign, with the witnesses of my assistance, which I attest.

JUAN B'TA LEANDRY.

Assist.:

NARCISSO BOTELLO.
JULIAN CHAVIS.

32 On the rancho of Cucamonga, on the twenty-eight day of the month of Feb'y, one thousand eight hundred and forty, I, the proper judge for the practice of these inquiries, (diligencias,) appointed two official cord-bearers, the names of whom, because they could not sign them, are omitted, whom I caused him the appointment, which they accepted under the oath which they consented to, agreeing to discharge faithfully their trust which I authorize, and sign, with the witnesses of my assistance, according to law.

JUAN B. LEANDRY.

Assista.:

NARCISSO BOTELLO.
JULIAN CHAVIS.

On the same day, month, and year, being in the place of the road which goes to San Bernardino, and at the point which crosses the creek of the same Cucamonga, in front of the hill on which the house is situated, for the effort of verifying the remeasurements and possession, which correspond to Tiburcio Tapia, of the respective tract Cucamonga, all the previous requisites of the law having been performed, and being in the presence of my witnesses of assistance, the official cord-bearers, and the surveyor, Don Abel Stearns, I caused a cord to be measured, which contained two hundred and nine varas, which was examined and approved by the said surveyor, and fixed to the extremities some wooden stakes. After previous observation and calculation of the surveyor, for his own disposition, the cord was stretched at the bank or bluff of the said creek, a direction east upon the same road which goes to San Bernardino, and there were
33 measured and counted six thousand three hundred varas unto

a hillock (or elevation) which rises in the same road, on which is an elder tree, which was marked for a landmark. to which end some branches were cut off. From that point the Sr[s] J. Bandini and Ygnacio Palomares having then presented themselves, stretching the rope a direction north, there were measured and counted twelve thousand seven hundred and forty-nine varas, which terminated at the foot of the mountain, at the edge inquiries (del egencias) were suspended, to be continued thereafter, which I note and sign for a preparation, with the surveyor and the witnesses of my assistance, which I attest.

ABEL STEARNS.
JUAN B'TA LEANDRY.

NARCISSO BOTELLO.
JULIAN CHAVIS.

On the twenty-ninth of said month and year, having returned to the same point where, the day before, the measurements were commenced, and from the said creek of Cucamonga, taking the direction east and west of the road, there were measured and counted twelve thousand varas, which terminated in the creek of San Antonio, which is the boundary of the rancho of San José and divides it and Cucamonga. Proceeding in stretching the cord a direction south and north, there were measured and counted five thousand varas, which terminated at the foot of the said mountain, which is the northern boundary. From here, stretching the cord by the foot of said mountain unto the point of the two evergreen oaks, at which, the day before, the measurements terminated and makes a
34 corner north by east, and there were counted the said number of varas, to wit, eighteen thousand and three hundred, which appears from the measurements along the road before referred to, which is the other boundary of the southern line. With the measurement of this tract were concluded to the satisfaction of the party interested, whom I ordered that he should place the respective landmarks at the corresponding points, so as to be understood, the same having been marked in sign of possession. All of which I set down for reference, (diligencias,) mentioning that the land of this tract, which is fit for any useful purpose, does not reach four square leagues, for the greater part of it, which is at the foot of the mountains, is sterile ; and I sign it for perpetuation, with the surveyor and the assistant witnesses, which I attest.

JUAN B'TA LEANDRY.
ABEL STEARNS.

Assist.:
NARCISO BOTELLO.
JULIAN CHAVIS.

Angeles, March (2nd,) one thousand eight hundred and forty. Let testimony be given to the party of these present returns, (diligencias,) that it may serve him for a title of possession, for his protection and security.

JUAN B'TA LEANDRY,
Second Justice of the Peace of this City and its District, (*comprehension.*)

Thus I decreed it, ordered it, and signed it, with my assistant witnesses, according to law, and attest.

JUAN B'TA LEANDRY.

Assista. :
NARCISSO BOTELLO.
JULIAN CHAVES.

35 It agrees with the original returns, (diligencias,) which are referred and exist in the book of public instruments, in which they are entered and appear from pages, (or leaves,) until it is faithfully taken and counted within in these five leaves, which I authorise and sign, with my assistant witnesses, in the city of Los Angeles, at the second day of the month of March, one thousand eight hundred and forty.

In testimony of truth.

JUAN B. LEANDRY.

Assista. :
NARCISO BOTELLO.
JULIAN CHAVIS.

Annexed to the deposition of Abel Stearns of November 1st, 1857.
GEORGE FISHER, *Secretary.*

Filed in office October, Nov., 1852.
GEO. FISHER, *Secretary.*

36 *Opinion of the board.*

LEON VICTOR PRUDHOMME, administrator, &c., *vs.* THE UNITED STATES. } For the place called Cucamonga, in Los Angeles county, containing three square leagues of land.

The petitioner alleges himself, in his petition, to be the administrator of the estate of Tiburcio Tapia, deceased, in which representative character he seeks a confirmation of the title held by the intestate at the time of his death.

He has presented and proved a grant made to said Tiburcio Tapia by Governor Juan B. Alvarado, dated March 3rd, 1839, and the testimonial of judicial possession which was given to the grantee by a justice of the peace February 29th, 1840. No approval of the grant by the departmental assembly is shown.

The grant was solicited for grazing purposes, and the grantee does not appear to have ever lived on the land. He, however, put his stock, with an overseer and servants, on the place within a year after the grant was made, and cultivated a portion of the premises. His occupation was continued until his death.

The only questions in the case which presents any difficulty is that of boundaries and segregation. The land granted is three square leagues, a little more or less, at the place designated, which quantity was to be segregated by judicial measurement, leaving the surplus to

the use of the nation. We have before us a part of the proof, the record of the proceedings of the justice of the peace who gave the juridical possession. The measurement appears to have been
37 made with great care; the corners are carefully designated, the length and direction of the lines are given, and landmarks duly established are described. The quantity of land assigned by this measurement under the grant, however, instead of being three square leagues, is within a minute fraction of seven leagues; nor is this discrepancy between the quantity granted and that of which official measurement was made accidental discrepancy unobserved by the parties, for the officer closes his report of the mensuration by declaring that the land of this tract, which is fit for any useful purpose, does not reach four square leagues, for the greater part of it which is at the foot of the mountains is sterile.

Here, then, is a grant of three square leagues of land, and an assignment by judicial measurement of more than double that amount. Does such a survey or measurement give the grantee a right to the entire quantity thus assigned to him, or is the survey inoperative and void?

Judicial possession, as produced under the Mexican authorities, implied, first, segregation of the quantity of land granted, and the actual demarcation of its boundaries, with a definite description of the same in satisfaction of the grant, and secured by the solemn act of putting the grantee in possession, the officer making proclamation to that effect, and the grantee demonstrating his acceptance of and dominion over the premises by walking over the same, throwing grass and stones to the four winds of heaven, &c.

38 The latter ceremony, so like the ancient cer'm'y and sign of our ancient Saxon ancestors, is regarded by us as useless formality, the performance of which secured no rights, and the omission of which defeated no title. Not so in reference to the segregation of the premises by defined lines and landmarks, when required by the grant. In such cases, the measurement was necessary in order to define the boundaries of the land to which the grantee's title would attach.

Titles of this kind, specifying the quantity of land granted, and designating the place where or larger limits within which it was to be located, and requiring a judicial act of measurement to separate and assign to the grantee the particular piece of land which he should hold under his grant, all similar in their character to the order of survey under which most of the titles in Florida were held, and the rules of the Supreme Court of the United States applied in those cases are applicable to these. In that portion of the Spanish domain a surveyor general was the officer intrusted with the segregation; here the alcalde or judge performed the duty. The Supreme Court has uniformly held that this segregation could be made only by the officer designated by the former government, a private survey being insufficient, United States *vs.* Hanson, 16 Pet. R., 196; that the location could be made only at the place designated in the grant, and according to the terms thereof, United States *vs.* Huertas, 9 Pet. R., 171; same *vs.* Levy, 13 Pet. R., 83; Forbes' case, 15 Pet. R., 172;

Villalobos *vs.* The United States, 10 How. R., 541; and that
39 the survey must be made to appear to conform to the terms of the concession, or it will not be valid, United States *vs.* Huertas, 19 Pet. R., 171. The concession or grant is the order under which the survey is made, and unless the officer executing it pursues its terms, his act is of no avail. The same principle which limits him as to the place of survey, limits him also as to the quantity of land to be assigned to the grant.

The officer making the juridicial measurement had no power to grant land; his duty and his power was confined to the act of segregating the quantity granted, defining its limits and bounds, and putting the grantee into possession. If the governor granted three leagues of land, it was not in the power of the surveyor or the alcalde, giving juridicial possession, to assign to the grantee seven leagues.

Such an authority would imply a power in the surveyor the alcalde to grant the public domain, while the law confided it to the governor and deputation or assembly. The duty of the alcalde was in good faith to proceed to measure out, in its proper locality, the quantity granted; small and unimportant differences, arising from accident and inaccuracy of measurement or the imperfection of instruments, would not, of course, be allowed to vitiate the proceedings. These might well be regarded as covered by the expression *a little more or less*, used to qualify the designation of the number of leagues covered by the grant. But where, through fraud or gross error, a quantity materially greater than that expressed in the grant was assigned by the
40 alcalde to the grantee, it must be regarded as a departure from the term of his authority, and can give the latter no title to the land. In the case before us more than double the quantity granted was measured by the alcalde to the grantee.

It is evident from the error that excess was not by mistake, but design, and that the possession was received by the grantee, knowing that less than a moiety of the premises measured to him had been conceded by the government; the official measurement thus made was clearly unauthorized, and must be considered as void.

Setting aside the act of judicial measurement does not necessarily defeat the grant. The latter then stands as if no such measurement had been made; and if without such measurement the grant could be confirmed, a decree in favor of the claimant might still be entered. But in this case the measurement was indispensable, in order to segregate the land and to give limits and bounds to that particular portion of it which the grantee might hold under the concession to him. This not having been legally obtained, the claim must be rejected. It has been suggested that under the Spanish and Mexican authorities, where land falling within the limits of a survey, according to the calls of a grant, was found to be covered with water, or marshy, or otherwise useless, it was to be excluded from the quantity surveyed, although included within the boundaries of the survey, and that an additional quantity of good land should be added equivalent to such portion of water land.

41 No law establishing such a rule is presented, and no Mex-

ican or Spanish authority recognizing the principle has been adduced. The same proposition was urged before the Supreme Court of the United States in the case of the United States *vs.* Levy, (13 Pet. R., 81;) but in that case, as in that now before us, no authority in law was shown, and there, as here, no sufficient proof to establish such a custom or practice by the former government was adduced; and if such a rule was in fact established, it would be difficult to see how it could apply in sustaining the claim in the case under consideration.

Two facts are disclosed in the returns of the officer who gave the judicial possession. First, that the good land exceeded in quantity three square leagues, which were granted; and, secondly, that the sterile and worthless land was in the rear part of the premises, and by no means necessary in order to have given to the grantee the full quantity of land granted.

The utmost stretch of such a rule could do no more than to allow compensation by increasing the quantity for worthless land, so located as to be unavoidably included in the survey.

Here more than the quantity of unobjectionable land located on a public highway was included in the survey, but the officer still continued his lines of measurement back to the mountains, so as to include the sterile lands as their base.

The rule, as stated, if admitted to exist, would not authorize such an extension. This would not be to make compensation by
42 additional acres for worthless land necessarily included in a survey, but it would be to satisfy a grant by assigning the full quantity of valuable lands conceded, and then adding to it an equal quantity of which no grant had been made.

A decree must be entered rejecting the claim. Rejected.

Filed in office October 17th, 1854.

GEO. FISHER, *Secretary.*

Decree.

LEON VICTOR PRUDHOMME
vs.
THE UNITED STATES.

In this case, on hearing the proof and allegations, it is adjudged by the commission that the claim of the said petitioner is not valid. And it is therefore decreed that his application for a confirmation thereof be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office October 17th, 1854.

GEO. FISHER, *Secretary.*

43 *Order.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situate in the southern district of California, it is hereby ordered that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary. One of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the United States.

44 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary of the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-two pages, numbered from 1 to 32, both inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of the said board of the documentary evidence, and of the testimony of the witnesses upon which the same was founded, on file in this office, in case No. 370, on the docket of the said board, wherein Leon Victor Prudhomme, administrator, &c., is the claimant against the United States for the place known by the name of Cucamonga.

In testimony whereof, I hereunto set my hand and affix my private [SEAL.] seal, (not having a seal of office,) at San Francisco, California, this thirtieth day of March, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Secretary.*

Filed April 10th, 1855.

C. E. CARR, *Cl'k.*

45 *Notice of appeal.*

In the United States district court for the southern district of the State of California.

LEON VICTOR PRUDHOMME, administrator, &c., *vs.* THE UNITED STATES. } No. 360. — For the lands called "Cucamonga."

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the United States, and a transcript of the proceedings in which was filed in the office of the clerk of the United States district court for the southern district of California on the tenth day of April, A. D. 1855, the appeal in the district court of the

United States for the southern district of California will be prosecuted by the claimant.

J. R. SCOTT. *Att'y for Claimant.*

To PACIFICUS ORD, Esq.,
U. S. Dist. Att'y for the Southern Dist. of Cal'a.
C. E. CARR, Esq.,
Clerk of the U. S. Dist. Court for the Southern District of California.

Filed Aug't 18th, 1855.

C. E. CARR, *Cl'k.*

46 *Petition for review.*

In the United States district court in and for the southern district of California.

LEON V. PRUDHOMME, administrator of estate of Tiburoic Tapia, deceased, appellant, *vs.* THE UNITED STATES, appellees. } Case 214.—Transcript 370.—"Cucamonga."

To the honorable I. S. K. Ogier, judge of the district court of the United States in and for the southern district of California:

The petition of Leon V. Prudhomme, administrator of the estate of Tiburcio Tapia, deceased, respectfully showeth: That on the 3d day of March, 1839, Juan B. Alvarado, governor of the department of the Californias, by virtue of authority in him vested by law, executed and delivered to Tiburcio Tapia a deed of grant of the date aforesaid, whereby he granted to him all that tract of land called "Cucamonga," situate in the county of Los Angeles, and in the said southern district of California, more particularly described in a petition filed by this petitioner on the 2d day of October, 1852, before the United States land commission to ascertain and settle the private land claims in the State of California, and the papers and proceedings thereupon had, which are here specially referred unto; that after the said 3rd day of March,
47 1839, the said grantee entered upon and took possession of the said granted premises; that thereafter, to wit, about the year 1847, the said Tiburcio Tapia died, leaving as his heirs his two children, Maria Merced, wife of your petitioner, and Juan de la Cruz; that on the 6th day of January, 1851, the probate court of Los Angeles county issued to your petitioner letters of administration on the estate of the said Tiburcio Tapia, deceased.

Your petitioner further states that on the 2nd day of October, 1852, he filed his petition claiming the said premises, as administrator of the estate of said Tiburcio Tapia, deceased, before the said land commissioners while sitting as a board, together with documentary evidence and the testimony of witnesses; and that afterwards, to wit, on the 17th day of October, 1854, the said board proceeded to decide upon the validity of said claim, and rejected the same; that afterwards, to wit, on the 10th day of April, 1855, an appeal was taken, the said board having filed in the office of the clerk of your honorable court a

certified transcript of these proceedings and final decision, and of the papers and evidence upon which the same are founded; and that afterwards, to wit, on the 18th day of August, 1855, your petitioner filed in the office of the said clerk a notice of his intention to prosecute the said appeal.

Wherefore your petitioner prays that the decree of the said commissioners may be reversed, and the title of the said heirs of Tiburcio Tapia, deceased, may be decreed to be valid, and for gen-
48 eral relief and costs. And, as in duty bound, etc.

J. R. SCOTT,
Attorney for Appellant.

Filed Octo. 15th, 1855.

C. E. CARR, *Cl'k.*,
By J. W. ROSS, *Dep.*

Summons.

UNITED STATES OF AMERICA,
Southern District of California, ss:

The President of the United Sates to P. Ord, U. S. dist. att'y for the south'n dist. of California, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against the United States in the district court of the United States in and for the southern district of California on the 15th day of October, in the year of our Lord one thousand eight hundred and fifty-five, at the city and county of Los Angeles, in said district, by Leon V. Prudhomme, admin'tr of the estate of Tiburcio Tapia, dec'd, praying the court to review the decision of the U. S. land commission rejecting his claim to the tract of land called "Cucamonga," and that you are required to appear at said court in said city within ten days after the service hereof, if served on you within the county of Los Angeles, and within twenty days if served on you in the county of San Diego or San Ber-
49 nardino, and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or the petitioner will apply to the court for the relief demanded therein.

In witness whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at the city of Los Angeles, this 14th day of December, A. D. 1855.

C. E. CARR, *Clerk.*

Received Dec'r 14th, 1855.

EDWARD HUNTER,
U. S. Marshal.,
Pr. M. L. GOODMAN, *Dep'ty.*

I served this summons, together with a certified copy of the petition, upon P. Ord, U. S. att'y for southern dist. of Cal'a, by delivering to

him personally a true copy of the same at Los Angeles, in the southern district of California, on the 26th day of Dec'r, A. D. 1855.

EDWARD HUNTER,
U. S. Marshal,
Pr. M. L. GOODMAN.

Sworn to and subscribed before me, 26th December, 1855.

C. E. CARR, *Clerk,*
By O. MORGAN, *Dep'ty.*

50 *Answer of U. S. dist. att'y.*

In the district court of the United States for the southern district of California, Hon. Isaac S. K. Ogier, judge.

LEON V. PRUDHOMME, adm'r of estate of Tiburcio Tapia, deceased, appellants,
vs.
THE UNITED STATES, appellees.
} No. 214.—Transcript No. 370.

The answer of Pacificus Ord, attorney of the United States for the southern district of California for and in behalf of the United States, to the petition of Leon V. Prudhomme, adm'r of the estate of Tiburcio Tapia, deceased, for a review of the decision of U. S. land commissioners for California, that he denies all and singular each and every allegation in said petition contained. And further, this respondent denies, generally, the validity of the alleged title to the tract of land called "Cucamonga," as claimed in said petition.

And the said respondent prays that this hon'l court will affirm the decision of the said commissioners in said case, and decree the said alleged title to be invalid, and for general relief.

P. ORD,
Attorney of the United States for the Southern District of California.

Filed Jan'y 4th, 1856.

C. E. CARR, *Clerk.*

51

52 *Mot. and order for testimony.*

In the United States district court for the southern district of California.

LEON V. PRUDHOMME, administrator of estate of Tiburcio Tapia, deceased, appellant,
vs.
THE UNITED STATES, appellees.
} Case No. 214.—Transcript No. 370.—"Cucamonga."

On motion of Jonathan R. Scott, counsel for appellant, it is by the court ordered that either party may take further testimony in the above-entitled cause.

Filed Oct'r 24th, 1855.

C. E. CARR, *Cl'k,*
By J. W. ROSS, *Dep'ty.*

53

54 *Suggestion of death of heir.*

In U. States dist. court, south'n dist. of California.

LEON V. PRUDHOMME, adm'r, &c., appellant.
vs.
THE UNITED STATES, appellee.
} Case 214.—Cucamonga.

And now comes the appellant, and suggests to the court the death of José de la Cruz Tapia, one of the heirs of Tiburcio Tapia, dec'd, and one of the parties for whose interest the claim in this case is prosecuted, intestate, and without wife or issue, about the month of January, 1853.

Wherefore he prays the judgment of the court to confirm the claim herein, for the benefit of Merced Tapia, the sole surviving heir of said Tiburcio Tapia and José de la Cruz Tapia, dec'd. And, as in duty, etc.

J. R. SCOTT,
Attorney for Appellant.

Filed Dec. 31, 1856.

C. SIMS, *Clerk.*

56 *App't of administrator.*

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Probate court, January 6th, 1851.

Court met; Don Agustin Olvera, judge, presiding. George Thompson Burrill, sheriff, and Wilson Jones, deputy clerk, present.

And now, on this day, comes Leon Victor Prudhomme, by Scott & Hays, his attorneys, and moves the court to grant him letters of administration upon the estate of Tiburcio Tapia; and due proof having been made to the court that publication of notice of this application has been made, as required by law, and no one appearing to object to the same, the said Leon Victor Prudhomme is hereby appointed and constituted administrator of the estate of the said Tiburcio Tapia.

STATE OF CALIFORNIA,
County of Los Angeles, sct:

I, John W. Shore, clerk of the probate court of Los Angeles county, hereby certify that the foregoing is a full, true, and correct copy of the original, as the same appears of record in my office.

Witness my hand and the seal of said court hereto affixed the 31st day of December, A. D. 1856.

[SEAL.]

JOHN W. SHORE, *Clerk,*
Per J. A. HINCHMAN, *D. C.*

Filed Dec. 31, 1856.

C. SIMS, *Clerk.*

57 *Letters of administration.*

STATE OF CALIFORNIA,
County of Los Angeles:

Leon Victor Prudhomme is hereby appointed administrator of the estate of Tiburcio Tapia, dec'd.

Witness Benj. D. Wilson, clerk of the probate court of Los Angeles county, by Deputy Wilson Jones, with the seal of the court affixed, this 6th day Jan'y, 1851.

By order of the court.

BENJAMIN D. WILSON, *Clerk*,
By WILSON JONES, *Dept.*

Filed Dec. 30th, 1856.

C. SIMS, *Clerk.*

58 *Deposition of M. L. Goodman.*

Deposition of M. L. Goodman, taken before C. Sims, United States commissioner for the district of California, at the United States court-house in the city of Los Angeles, on Wednesday, the 31st day of December, A. D. 1856, at 11 o'clock a. m., by consent and agreement of parties, to be used as testimony on behalf of the claimant in a certain cause now pending in the United States district court for the southern district of California, being case No. 214 on the docket of said court, wherein L. V. Prudhomme is appellant and claimant, and the United States are appellee.

Present: P. Ord, esq., U. S. att'y on behalf of appellee, and J. R. Scott, esqr., on behalf of appellant and claimant.

M. L. Goodman, being duly sworn, deposes and says:

State your name, age, and place of residence.

Ans. My name is M. L. Goodman; am 37 years of age, and reside in Los Angeles; have resided here 8 years.

Quest. Did you know José de la Cruz Tapia, infant son of Tiburcio Tapia, deceased.

Ans. I did.

Quest. Where and when did you know him?

Ans. I knew him in this place from 1852 to '53.

Quest. State whether he is living or dead; and if dead, when did he die?

Ans. He is dead; he died about 2 or 3 years ago; I am not positive; I think he died in the town.

Quest. State about his having left a wife or children.

59 Ans. He left neither wife or children; he was a boy about 13 or 14 years old, I think.

M. L. GOODMAN.

Sworn and subscribed to before me this 31st Dec'r, 1856.

C. SIMS, *U. S. Commissioner.*

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, C. Sims, United States commissioner for the district of California, hereby certify that the foregoing deposition of M. L. Goodman was taken before me, in accordance with the request of and agreement of said attornies at the United States court-house in the city of Los Angeles, State of California; that the said M. L. Goodman was by me duly sworn according to law as a witness in said cause in the caption of this deposition mentioned; and, after being so sworn, his testimony was by me reduced to writing in his presence and that of the said attorneys, and after having been by me carefully read to him, and by him corrected as he desired, was by him signed in my presence.

In witness whereof, I hereunto set my hand and affix my private seal, (there being no official seal,) this 31st day of December, 1856.
[SEAL.]

C. SIMS, *U. S. Commissioner.*

Filed this 31st Dec., 1856.

C. SIMS, *Cl'k,*
Per J. H. COLEMAN, *Dep'ty.*

60 *Decree.*

In United States dist. court, southern dist. of California. December term, 1856.

LEON V. PRUDHOMME, admin't'r, &c., appellant,
vs.
THE UNITED STATES, appellee.
} Case No. 214.—"Cucamonga."

This cause coming on to be heard on appeal from the decision of the United States board of land commissioners to ascertain and settle the private land claims in California under an act of Congress approved March 3d, 1851, on a transcript of the decision and proceedings of said board, and of the papers and evidence upon which said decision was founded, and on additional evidence filed before this court; and it appearing to the court that said transcript and the notice of appeal have been duly filed, and counsel for the respective parties having been heard—

It is ordered, adjudged, and decreed, that the decision of the said board be, and the same hereby is, in all things reversed.

And it is further adjudged and decreed that the claim of the appellant is good and valid, and the same is hereby confirmed to Maria Merced Tapia, sole surviving heir of Tiburcio Tapia and Jose de la Cruz Tapia, deceased, to the extent of three leagues, and no more, within the boundaries described in the grant, and in the map to which the grant refers, to wit: the sierra on the north, the arroyo of

San Antonio and Rancho de San José on the west, and the road from Los Angeles to San Bernardino on the south:

61 Provided that should there be a less quantity than 3 square leagues of land within said boundaries, then confirmation is hereby made of such less quantity.

Thus done in open court this 31st Dec., 1856.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the S. Dist. of Cal'a.

Filed this 31st December, A. D. 1856.

C. SIMS, *Cl'k,*
Per J. H. COLEMAN, *Dep'ty.*

62 *Appeal.*

U. S. dist. court, south'n dist. Cal'a. December term, A. D. 1856. Feb'y 24th, A. D. 1857.

LEON VICTOR PRUDHOMME, admin't'r, *vs.* THE UNITED STATES. } No. 214.

On motion of P. Ord, U. S. dist. attorney, it is ordered that an appeal be allowed the United States in this case.

63 *New appeal.*

United States dist. court, south'n dist. Cal'a. December term, A. D. 1861. December 9th, A. D. 1861.

LEON VICTOR PRUDHOMME, admin't'r, appellee, *vs.* THE UNITED STATES, app'l't. } No. 214, D. C.—No. 370, L. C.—"Cucamonga."

And now comes J. R. Gitchell, esq., appointed at the request of the court to represent the U. S. herein, (there being no U. S. dist. att'y present,) and moves the court that a new appeal be allowed the U. S. in this case to the Supreme Court of the U. S. from the order and decree of this court heretofore rendered:

Which motion, being by the court heard and understood, is granted.

64 United States district court, southern district of California.

CLERK'S OFFICE, MONTEREY, CALIFORNIA.

I, John O. Wheeler, clerk of the United States district court for the southern district of California, hereby certify the foregoing sixty-three pages, numbered from 1 to 63, both inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of said court, of the documentary evidence, and of the testimony of the witnesses upon which the same was founded, on file

in my office, in case No. 214, on the docket of said court, wherein Leon Victor Prudhomme, administrator, &c., is claimant against the United States for the place known by the name of Cucamonga.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Monterey, California, this the 15th day of April, A. D. 1862.

JOHN O. WHEELER,
Cl'k U. S. Dist. Court, South'n Dist. Cal'a.